

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PAVLE ZIVKOVIC	:	Case No.:
	:	1:22-cv-07344-GHW
Plaintiff,	:	
-against-	:	<u>DECLARATION OF FRED L. SEEMAN</u>
	:	<u>IN RESPONSE TO PLAINTIFF'S</u>
VALBELLA AT THE PARK LLC	:	<u>ORDER TO SHOW CAUSE</u>
	:	
Defendant.	:	
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I, **Fred L. Seeman**, pursuant to 28 U.S.C. §1746, hereby declare as follows:

1. I am the attorney for the Defendant, Valbella at the Park LLC. As such, I am fully familiar with the facts and circumstances set forth herein.
2. I submit this declaration in response to Plaintiff's Order to Show Cause seeking to compel 10Tier.com to respond to the Subpoena *Duces Tecum* served by Plaintiff.
3. In sum, Plaintiff's application should be denied inasmuch as we have been advised that 10Tier.com has now complied with the subject subpoena.

PLAINTIFF'S APPLICATION IS MOOT

4. Plaintiff is seeking to compel non-party, 10Tier.com, to respond to a Subpoena *Duces Tecum* dated April 24, 2023 (hereinafter the "10Tier Subpoena"). *See, Docket Entry ("DE") 40-1.*
5. Caselaw is clear that the Plaintiff, as the proponent of the OGR Subpoena, "bears the initial burden of proving that the information and testimony sought in the subpoena are relevant and proportional to the needs of the case". *Lecchook v. Lebanese Canadian Bank SAL*, 2023 US Dist. LEXIS 70134, 6-7 (S.D.N.Y. 2023).
6. Here, Plaintiff has not demonstrated the relevance of the documents sought in the 10Tier Subpoena.

7. Notwithstanding the foregoing, we have been advised by a representative of 10Tier.com that, on or about June 19, 2023, 10Tier.com complied with the 10Tier Subpoena by producing several emails and other documents from its business records.

8. Accordingly, Plaintiff's Order to Show Cause should be denied as moot.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: New York, New York
June 20, 2023

/s/ Fred L. Seeman
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